TERMS AND CONDITIONS OF SALE (AUS)

(Except for 'small business contracts' and 'consumer contracts' as defined in the ACL.)

1 INTERPRETATION

In these terms and conditions:

1.1 ‘Amounts Owning’ means all amounts owing by the Buyer and any of its Related Bodies Corporate to Sealed Air on any account or in any capacity; ‘(a) Buyer’ means the person (including its successors, personal representatives and permitted assignees) acquiring Supply from Sealed Air and where the Buyer is a company means that company and each of its Related Bodies Corporate. Where there is more than one Buyer, the covenants of their part contained herein shall be deemed to be joint and several covenants;

1.3 ‘Supply’ means the goods to be supplied or services to be performed by Sealed Air under the Contract;

1.4 ‘equipment’ means packaging or cleaning machinery and associated software (as applicable) as specified in the Quotation;

1.5 ‘goods’ means all goods, equipment and other personal property to be sold, leased, hired or otherwise supplied by Sealed Air to the Buyer under the Contract;

1.6 ‘Quotation’ means the quotation issued by Sealed Air for each transaction incorporating Sealed Air terms and conditions specific to that supply including (a) terms for the supply of equipment by way of sale, lease or free on loan; and (b) any statement of work (SOW) describing services to be delivered (as applicable);

1.7 ‘Related Body Corporate’ has the meaning it has in the Corporations Act 2001 (Cth);

1.8 Sealed Air means each of Sealed Air Australia Pty Ltd (ABN 65 004 207 532), Entapack Pty Ltd (ABN 86 006 471 209), and any other Australian affiliate of Sealed Air Corporation from time to time that submits the Quotation (as applicable);

1.9 ‘services’ means the services to be performed under the Contract (and as described in a SOW incorporated into a Quotation);

1.10 ‘SOW’ means a statement of work which describes goods and services to be supplied by Sealed Air;

1.11 ‘Specification’ means any specification, product information sheet or safety data sheet furnished by Sealed Air to the Buyer or referred to in the Quotation in respect of the Supply (if any).

1.12 The use of the word ‘includes’ or ‘including’ shall be interpreted to mean ‘includes’ or ‘including without limitation’. A reference to ‘$’ or ‘dollars’ in the Contract is to Australian dollars (unless expressly stated otherwise).

1.13 A reference to any legislation or to any provision of any legislation will be deemed to be a reference to that legislation or provision as from time to time amended, re-enacted, consolidated or substituted and, unless the context requires otherwise, will also include any laws issued under any such legislation or provision.

2 CONTRACT

2.1 These terms and conditions apply to all contracts for the supply of goods or performance of services by Sealed Air to the Buyer (each a ‘transaction’) and supersede any previous orders issued by the Buyer and all terms and conditions previously issued by Sealed Air. No contract for the supply of goods or services shall exist between Sealed Air and the Buyer except upon these terms and conditions, unless exclusion or modification is agreed to in writing by Sealed Air. Any orders placed by the Buyer to Sealed Air for Supply and accepted by Sealed Air is deemed to be an order incorporating these terms and conditions, the Quotation and Sealed Air’s order acknowledgment (if any) (collectively the ‘Contract’). No order placed by the Buyer to Sealed Air will bind Sealed Air unless and until such order is accepted by Sealed Air in its absolute discretion.

3 ORDERS AND PRICE

3.1 Quotations are valid for 30 days. Sales are on a firm basis and no returns will be accepted. Sealed Air may alter the price upon written notice to the Buyer of the new price as at the delivery date.

3.2 Placement of a purchase order by the Buyer must reference the applicable Quotation (if any) and is an acceptance of the Contract. Sealed Air reserves the right to accept a part only of any order by notifying the Buyer in writing. An order which has been accepted in whole or in part by Sealed Air cannot be cancelled or varied by the Buyer without obtaining the prior written approval of Sealed Air which it may refuse in its absolute discretion.

3.3 If the Buyer is the agent of the Supplier then the Supplier shall be entitled to invoice, and deliver to, the Buyer all finished goods made to forecast / per order. The Buyer shall be entitled to instruct the Supplier to suspend the supply of goods in the event that it is separately identifiable as the goods of Sealed Air and will not remove any marks identifying the equipment. All security interest clauses in this Contract will apply with full effect to the equipment.

4 PAYMENT

4.1 Sealed Air will invoice on delivery of the goods or performance of the services purchased. The Buyer must pay the entire amount of an invoice in immediately available funds according to the applicable credit terms granted.

4.2 If payment is not made in accordance with clause 4.1 Sealed Air will be entitled to charge and calculate interest at a rate of 12% per annum. Such interest shall be calculated from the date of notification of the overdue amount.

4.3 Default by the Buyer under these payment provisions entitles Sealed Air to demand full payment immediately, under any then current agreement between the Supplier and Sealed Air or the Supplier shall cease to provide any advice or service or any intermediate payment in settlement of any particular account. Until all debts due to Sealed Air have been paid in full, the Buyer is at liberty to sell the goods in the ordinary course of business as agent for Sealed Air and shall account to Sealed Air for the proceeds and shall hold such proceeds separately on trust for Sealed Air.

5.1 Sealed Air must make all reasonable efforts to have the Supply delivered or services performed at the delivery date.

5.2 Any invoice which has been accepted in whole or in part by Sealed Air, may elect to terminate all or any of those other agreements immediately by notice in writing to the Buyer.

6 DELIVERY

6.1 Risks shall pass from Sealed Air to the Buyer upon delivery of the goods to the premises of the Buyer or premises nominated by the Buyer.

6.2 Following delivery, the Buyer must, at its own expense, insure the goods for the buyer’s account against storm and tempest, loss or damage by fire, accident or malicious or criminal damage.

7 TITLE

The parties agree that the property in and title to the unused goods remains with Sealed Air until all amounts Owning have been paid in full and notwithstanding any intermediate payment in settlement of any particular account. Until all debts owing to Sealed Air by the Buyer have been paid in full, the Buyer is in a fiduciary relationship with Sealed Air and is a bailee only of the unused goods.

8.1 The Buyer shall not sell any items which bear the Sealed Air trade mark until or unless such items have been returned to Sealed Air for full payment; and the Buyer shall store the equipment to be used at all times as if the equipment was Sealed Air equipment and shall not remove such equipment from Sealed Air premises.

9 TECHNICAL SPECIFICATIONS

9.1 invoices, weights, gauges, sizes and tares of Sealed Air shall be treated as prima facie accurate and may vary from time to time as set out in the Specification.

9.2 Subject to clause 11, if any of the goods are found to not meet Specification due to reasons for which Sealed Air is responsible and the Buyer notifies Sealed Air in writing promptly upon becoming aware of the non-compliance and in any event within 90 days of delivery, clause 12.1(a) shall apply as Buyer’s sole and exclusive remedy for such non-compliance, provided that (i) Sealed Air will not be liable for goods which have not been stored or used in a proper manner; (ii) the goods are returned in the condition in which they were delivered; (iii) the goods have not been sold on a non-returnable basis; and (iv) if the goods carry an expiry date, the goods have not expired.

10 FITNESS FOR PURPOSE

10.1 Subject to clause 11, the Buyer acknowledges that Sealed Air or a person purporting to act on its behalf has not made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the goods supplied by Sealed Air or any other matter. The Buyer acknowledges that without relying upon the skills or judgment of Sealed Air or any person purporting to act on its behalf, it has determined that the Supply being acquired shall be fit for its purposes. Any description of the Supply is for identification only and shall not constitute a contract for the supply of the goods by description.

10.2 Buyer agrees that any advice or work provided by Sealed Air at no charge is provided on an ‘as is’ basis and Sealed Air shall have no liability to Buyer in respect of the advice or work. Moreover, Technical advice given as part of a SOW will be warranted as set out in the SOW, but subject to these terms.

11 STATUTORY RIGHTS OF THE BUYER

11.1 The Contract shall not exclude or modify the rights, entitlements, remedies and liabilities of either party by any condition or warranty implied by any Commonwealth, State or Territory Act (including but not limited to the Australian Consumer Law (“ACL”) set out in schedule 2 of the Competition and Consumer Act 2010 (Cth) unless any other law rendering void or prohibiting such exclusion or modification. Except to the extent that any such rights, entitlements, remedies and liabilities cannot be excluded or limited, all representations, terms, warranties and conditions not set out in the Contract in relation to the Supply included in any document or representation of Sealed Air or any person purporting to act on behalf of Sealed Air, which are in addition to those set out in the Contract, are hereby expressly excluded.

12 LIABILITY

12.1 Notwithstanding any other provision of the Contract (but subject to clauses 11.1 and 11.2) the liability of Sealed Air under clauses 9, 10 and 11 above shall be limited to, at Sealed Air’s sole discretion, any one or more of the following: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods or the supply of equivalent goods; (iii) the payment of the cost of replacing or repairing the goods or of acquiring equivalent goods; and/or (iv) the re-performance of the services (as applicable).
Sealed Air shall not however require payment for any standard parts or materials which Sealed Air may be able to use at the time in any other contract then current. Any prepayments which may have been made to Sealed Air under the Contract shall be applied towards the satisfaction of such sum as may become due to it and the excess (if any) prepayment shall be refunded to theBuyer. An ‘event of force majeure’ means anything outside Sealed Air’s reasonable control including but not limited to: acts of God, war, invasion, rebellion, sabotage, pandemic or epidemic, labour dispute, labour shortage, failure or delay in transportation, act or omission (including laws, regulations, codes and standards, disapprovals or failures to approve) of any third person (including contractors of Sealed Air), governments or government agencies).

17 NOTICE
A notice given by Sealed Air to the Buyer or the Buyer to Sealed Air must be in writing, be left at or sent by registered post or facsimile or email requesting receipt confirmation to the address in the applicable Quotation.

18 TAXES
Unless otherwise stated, the prices quoted are exclusive of any taxes, including GST (as that term is defined in the A New Tax System (Goods and Services Tax) Act 1999, the Goods and Services tax is payable on the full amount of the quotation are a taxable supply for the purpose of the GST Act, in addition to paying for the goods, the Buyer must pay to Sealed Air the GST payable in respect of the taxable supply. If any other taxes are levied on the goods and services, these must be paid by the Buyer.

19 QUANTITIES
Sealed Air will use all reasonable endeavours to supply the quantity of goods ordered by the Buyer. However, delivery will be considered to be made when under age and overage is not more than 15%. The only exception to this percentage (unless otherwise stated in the Quotation) is for some small orders pertaining to the Sealed Air Division trading as ‘Cryovac’ where the allowable overage is 5% and if ordered for: (a) Barrier Bags, Casings, Pouches in quantities of less than 5,000 units; (b) Laminate Rollstock in quantities less than 250 kilograms; and (c) Tubing in quantities of less than 10,000 metres.

20 GOVERNMENT REGULATIONS
20.1 These terms and conditions are governed by the laws of Victoria, Australia excluding: (i) any conflict-of-laws provisions thereof that would otherwise require the application of the law of any other jurisdiction; and (ii) the United Nations Convention on Contracts for the International Sale of Goods (if applicable). The Buyer and Sealed Air agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and the courts of appeal from them.
20.2 If a difference or dispute arises between the parties arising out of or in connection with the sale, purchase, exhibition or lien or overage in respect of the equipment).
21.2 The Buyer acknowledges that the Contract constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth) (‘PPSA’). Sealed Air takes a security interest in all goods supplied to the Buyer under the Contract and any monies paid by the Buyer to Sealed Air for payment of any amount owing in relation to the goods. Sealed Air’s security interest attaches to the goods when the Buyer obtains possession of the goods. The Buyer shall not create or cause to be created a security interest over, or in respect of its rights in, the goods other than the security interest arising under the Contract. The Buyer consents to Sealed Air perfecting its interest in any goods provided by Sealed Air to the Buyer by registration under the PPSA and agreed to do anything reasonably requested by Sealed Air to enable it to do so including, but not limited to, executing all documents and promptly informing Sealed Air of any change of name or other details of the Buyer.
21.2.1 To the extent permitted by law, the Buyer agrees to waive its rights under the PPSA to: (i) receive a copy of any verification statement; (ii) receive any notice that Sealed Air intends to sell the goods or to retain the goods on enforcement of the security interest granted under these terms; (iii) object to a prior encumbrance on retention of the goods in satisfaction of any obligation owed by Buyer to Sealed Air; (iv) receive a statement of account on sale of the goods; (v) retain the goods; and (vi) where any goods become an accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession.
22 GENERAL
22.1 If one or more provisions of these terms and conditions is or becomes void, voidable or unenforceable for any reason, all other provisions shall remain in full force and effect.
22.2 No variation of this Contract is legally binding upon either party unless in writing and signed by both parties.
22.3 The Contract sets out the entire understanding between the parties with respect to the subject-matter contained in it. All prior verbal and written agreements, representations, warranties, explanations and commitments expressed or implied, affecting that subject-matter are superseded by the Contract and have no effect.
22.4 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Contract or any part of it.
22.5 Sealed Air may, in its absolute discretion, sub-contract the Supply. The Buyer may not assign, pledge or transfer its interest in the Contract (or any part of it) of its rights or obligations hereunder without the prior written consent of Sealed Air.
22.7 Failure by Sealed Air to insist upon strict performance by the Buyer of any of these terms and conditions is not to be taken to be a waiver of any rights of Sealed Air and is not to be taken to be a waiver of these terms and conditions. 22.8 To the extent of any inconsistency between the Quotation and these terms and conditions, these terms and conditions prevail in any event. 22.9 All prior verbal and written agreements, representations, warranties, explanations and commitments expressed or implied, affecting that subject-matter are superseded by the Contract and have no effect.
22.10 To the extent of any inconsistency between the Quotation and these terms and conditions, these terms and conditions prevail in any event. 22.11 Any term of these terms and conditions which would be void because the term is unfair for any reason (a) must be read down to the extent necessary to avoid that result; and (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract. 22.12 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Contract or any part of it. 22.13 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Contract or any part of it.